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BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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IN THE MATTER OF: :
CONSENT MARKETS, TARIFFS AND RATES - ELECTRIC :
CONSENT MARKETS, TARIFFS AND RATES - GAS :
CONSENT ENERGY PROJECTS - HYDRO :
CONSENT ENERGY PROJECTS - CERTIFICATES :
DISCUSSION ITEMS :
STRUCK ITEMS :
- - - - -x

901ST COMMISSION MEETING
OPEN MEETING

Commission Meeting Room
Federal Energy Regulatory
Commission
888 First Street, N.E.
Washington, D.C.

Thursday, February 2, 2006
10:25 a.m.

1 APPEARANCES :

2 COMMISSIONERS PRESENT :

3 CHAIRMAN JOSEPH T. KELLIHER

4 COMMISSIONER NORA MEAD BROWNELL

5 COMMISSIONER SUEDEEN G. KELLY

6 SECRETARY MAGALIE R. SALAS

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18 ALSO PRESENT :

19 ANNE G. BLOOM, Reporter

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P R O C E E D I N G S

(10:25 a.m.)

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3 CHAIRMAN KELLIHER: Good morning. This open
4 meeting of the Federal Energy Regulatory Commission will
5 come to order to consider the matters that have been duly
6 posed in accordance with the Government in the Sunshine Act
7 for this time and place.

8 Please join us in the Pledge of Allegiance.

9 (Pledge of Allegiance recited.)

10 CHAIRMAN KELLIHER: I want to start by
11 introducing a few special guests. This is a little bit like
12 the State of the Union. There are some special guests in
13 the gallery.

14 There is my wife, who many of you know. She was
15 here at the meeting last July when I assumed the role as
16 Chairman. And that's my son, Damien, our son Damien.
17 Damien was born right about the -- almost the exact day when
18 EPAct was enacted into law.

19 (Laughter.)

20 CHAIRMAN KELLIHER: He's an EPAct baby on one
21 level.

22 (Laughter.)

23 CHAIRMAN KELLIHER: And we thought this was an
24 important meeting and that he should be here, because if, 20
25 years from now, he asked, where were you when EPAct was

1 implemented, he can say he had a front-row seat.

2 (Laughter.)

3 In fact, why don't I bring him up?

4 (Applause.)

5 CHAIRMAN KELLIHER: He's a little sick, so he
6 might not enjoy our meeting and might not stay for the whole
7 meeting.

8 We have some other special guests. Since this
9 meeting is an EAct meeting, we had a number of
10 Congressional visitors this morning, Staff from the two
11 authorization committees, the House and Senate Committees,
12 and some of them have stayed, the real die-hards have stayed
13 to see us vote on some of the EAct matters, and that would
14 be Kurt Bilas, a Counsel at the House Energy and Commerce
15 Committee, who handles electricity matters; Maryam
16 Sabbaghian, who was here at our last meeting. She's
17 becoming a devotee of FERC meetings.

18 (Laughter.)

19 CHAIRMAN KELLIHER: She's a Counsel also from the
20 House Energy and Commerce Committee Majority Staff and
21 handles gas matters. And there is Elizabeth Stack, who is
22 also on the House side, on the Committee Staff. So I want
23 to thank them for being here, and because we are trying to
24 faithfully implement the Energy Policy Act in the way
25 Congress intended, I hope that's recognized, and I'm glad

1 they're here to see us act.

2 (Baby cries.)

3 CHAIRMAN KELLIHER: It's probably time to return
4 him.

5 (Laughter.)

6 CHAIRMAN KELLIHER: I also want to recognize
7 Larry Gasteiger on my Staff, who has stepped out for a
8 moment.

9 (Laughter.)

10 CHAIRMAN KELLIHER: Let me skip that for a
11 moment, but I want to welcome all of our EPAct watchers who
12 are viewing over the Internet. FERC now shows its open
13 meetings over the website at www.ferc.gov, and I'll be
14 curious, after this meeting, to see how many hits we had on
15 this meeting, and, particularly how many were from
16 Princeton, New Jersey.

17 (Laughter.)

18 CHAIRMAN KELLIHER: Now, Larry's not here, so let
19 me talk about him anyway. Again, this is the last meeting
20 where Larry will be officially part of my personal staff.
21 He is going to the office of General Counsel.

22 I think he's done a magnificent job as I've been
23 Chairman the past six months, and I'm going to miss him
24 because of -- that's not Larry --

25 (Laughter.)

1 CHAIRMAN KELLIHER: -- because I will miss his
2 friendship and also miss the excellent quality of his
3 advice. And I'll also miss having four attorney advisors.
4 I have really enjoyed having four attorney advisors the past
5 two weeks, so I'll miss that advantage.

6 But I'm sure I'll still see him, and I'll have to
7 have backlog meetings and meetings on Order 663 more
8 frequently, just to make sure I have contact with him.

9 Let's turn to EPAAct. Now, today, the Commission
10 holds a special meeting to take action on a number of
11 matters relating to implementation of the Energy Policy Act
12 of 2005.

13 And President Bush deserves a lot of credit for
14 the Energy Policy Act. I think there is little doubt that
15 this important law would not have been enacted, but for the
16 President's determination. He started pushing this bill
17 nearly five years ago, and persisted until it became law.

18 Other Presidents would have abandoned the effort
19 a long time ago, but President Bush persisted and the law
20 was enacted.

21 Now, the Energy Policy Act of 2005 has three
22 principal policy goals and areas of concern to the
23 Commission: First, it reaffirmed the commitment to
24 competition in wholesale power markets as national policy,
25 the third major federal law to do so in the past 25 years.

1 Now, second, it strengthened the Commission's
2 regulatory tools, recognizing that effective regulation is
3 necessary to protect the consumer from exploitation and to
4 assure fair competition.

5 And, third, it provided for development of a
6 stronger energy infrastructure. The Energy Policy Act gave
7 the Commission significant new responsibilities. It also
8 gave us significant new authority to discharge those
9 responsibilities.

10 Now, in my view, the Energy Policy Act of 2005,
11 is the most important energy law enacted in decades and
12 represents the most significant change in Commission
13 authority since the New Deal.

14 This new law gives us regulatory tools to respond
15 to changes in electricity and gas markets that have occurred
16 since the 1930s. It gives us stronger regulatory tools to
17 prevent exercise of market power in electricity markets; to
18 prevent manipulation of electricity and gas markets; and
19 assure the smooth workings of those markets.

20 It gives the Commission robust enforcement and
21 civil penalty authority, something we sorely lacked. It
22 gives us major new responsibility to establish and enforce
23 electric reliability standards for the bulk power system.

24 We've taken on these duties and authorities with
25 a sense of purpose, mindful of the public trust they entail,

1 and dedicated to meeting these obligations within the time
2 allotted by Congress.

3 Now, the Commission is implementing the Energy
4 Policy Act in a timely manner, and I believe we're the only
5 federal agency with significant implementation
6 responsibility, that has met or exceeded very statutory
7 milestone in the law. We have met or exceeded every
8 deadline Congress set for us.

9 One of the tasks Congress gave us, was to
10 implement repeal of the Public Utility Holding Company Act
11 of 1935, a 70-year old law, and implement a new law in its
12 place, the Public Utility Holding Company Act of 2005, all
13 in a four-month period, and we met that deadline.

14 Since EPO Act was signed into law six months ago,
15 and including actions we're taking today, the Commission has
16 completed ten Notices of Proposed Rulemakings, six Final
17 Rules, four reports to Congress, including one joint report
18 with the Department of Energy that will be sent to Congress
19 shortly, and entered into a Memorandum of Understanding with
20 the Commodities Futures Trading Commission.

21 Out of the six rules, I'd like to mention that
22 PUCA's 1935 repeal, as well as our expanded merger
23 authority, will become effective next week.

24 In the development of the six final rules,
25 Commission Staff reviewed roughly 5,000 pages of comments.

1 We held four technical conferences relating to
2 implementation of the Energy Policy Act, and held the first
3 Joint Board meetings in decades.

4 We've also worked closely with other federal
5 agencies on implementation of various provisions of the new
6 law.

7 Now, our success in implementing the Energy
8 Policy Act is due to a number of factors: First, we had an
9 excellent plan. Right after the law was enacted, I asked
10 Staff whether any of the deadlines were manifestly
11 unattainable, and, if so, we should inform Congress
12 immediately, rather than wait until the 11th hour.

13 Staff responded that the deadlines were
14 aggressive, but attainable, and I instructed them to develop
15 a plan, and they developed a very detailed implementation
16 plan that reads like a train timetable.

17 Virtually every week, two or three or four
18 actions have to occur, either internally or externally, to
19 stay on schedule. Some actions slip, other advance, but in
20 the end, we met the deadlines.

21 We also had strong management of that plan, and
22 the credit here must go to Cindy Marlette, the Director of
23 our Energy Policy Act implementation efforts. It's one
24 thing to have a plan; it's another to execute that plan
25 smoothly, and Cindy did just that.

1 I was also fortunate to share this responsibility
2 with my colleagues, Nora Brownell and Suedeem Kelly, who
3 have been dedicated to the task of implementing the Energy
4 Policy Act in timely and effective manner.

5 Economic regulatory bodies typically are composed
6 of multi-member commissions, in order to assure that a
7 diversity of views is brought to bear, and I assure you that
8 that occurred over the last six months.

9 My colleagues consistently improved our product,
10 and I'm thankful for their efforts and their skill.

11 But, in the end, the key to successful
12 implementation of the Energy Policy Act, was the complete
13 professionalism of the Commission Staff. The Staff threw
14 themselves into this effort.

15 The various teams were each composed of Staff
16 from as many as three different program offices.
17 Nonetheless, they functioned together smoothly, and, in my
18 view, the performance of the Commission Staff over the past
19 six months, has been superb.

20 Now, we have not yet fully completed
21 implementation of the Energy Policy Act. Some of the
22 required actions have 12-month deadlines; others, 18 months;
23 still others, four years, but today marks the completion of
24 our implementation of the lion's share of the Energy Policy
25 Act responsibilities.

1 Implementation of the Energy Policy Act is a huge
2 undertaking, and it may be tempting to think that with
3 issuance of the last Final Rule, our work will have ended,
4 but, in a larger sense, it will only have just begun.

5 The Energy Policy Act permanently changed the
6 role that the Commission plays in energy markets. If you
7 consider our reliability responsibility, our real work only
8 begins with issuance of a Final Rule.

9 After that, we'll have to review one or more
10 applications for certification of an electric reliability
11 organization, examine more than 90 proposed continental
12 reliability standards, review a pro forma delegation
13 agreement, consider individual delegation agreements,
14 examine a host of regional reliability standards, and
15 oversee the effective enforcement of reliability standards.

16 Now, from that perspective, issuing the
17 reliability Final Rule is not the end, but only the end of
18 the beginning for the Commission.

19 The Energy Policy Act represents a vote of
20 confidence in the Commission, and Congress gave us a tall
21 task, but I think our actions to date prove we're worthy of
22 that confidence.

23 We've been dedicated to faithfully executing the
24 law in the manner Congress intended, and I think that's
25 reflected in the decisions we have made and are poised to

1 make today.

2 I also want to recognize the hard work of the
3 members of the House and Senate who led this effort,
4 particularly Chairman Barton, Chairman Domenici, Senator
5 Bingaman, and Representative Dingle. I want to praise the
6 Congressional staff who labored on the Energy Policy Act,
7 some of whom join us today.

8 Now, this bill was a long time in the making.
9 The electricity provisions, in particular, have roots that
10 go back nearly ten years. And there were many versions of
11 the legislation over the years, and I'm thankful that the
12 final version was the best of the lot.

13 Now, this bill was so long in the making, that I
14 actually worked on early versions of it. Seven years ago, I
15 was a counsel to the House Energy and Commerce Committee,
16 working on electricity legislation, and now I'm privileged
17 to be in a position to help implement this new law.

18 My colleagues and I have approached this task
19 with the full knowledge that if we do our job well, the
20 rules we issue today may well stay in place for years.

21 However, we also recognize that if we do our jobs
22 poorly, those rules may also stay in place for years, and,
23 for that reason, we've been dedicated to getting the rules
24 right from the beginning.

25 And I'd like to ask my colleagues if you have any

1 comments you want to make on EPAct implementation.

2 COMMISSIONER KELLY: As you know, Joe and Nora,
3 and many of you in the audience, I regularly ride the Metro
4 to work, and I am not reluctant to criticize it.

5 (Laughter.)

6 COMMISSIONER KELLY: However, I have developed
7 even more appreciation over the last six months, of how
8 difficult it really is to make the trains run on time. I
9 will no longer criticize WAMTA -- well, maybe every now and
10 then -- and it really is, our success in this arena, really
11 is due to the efforts of our Staff. They worked long and
12 hard and there have been many of them.

13 They didn't have a decent Christmas vacation, and
14 their dedication, their commitment to the public interest,
15 is very inspiring. I'd like to thank them personally, and
16 I'd also like Cindy to consider running for the Board of
17 WAMTA.

18 (Laughter.)

19 COMMISSIONER BROWNELL: I think that having
20 waited for years on the development of an energy bill -- I
21 think I testified the first time in the House about ten days
22 after I was confirmed as a state commissioner, which is a
23 scary thought, because what I didn't know, was pretty much
24 everything.

25 But it was fine, they didn't listen to me then,

1 so it was okay. But I think, given that this bill has been
2 so contentious and there have been competing interests, it
3 is really extraordinary that Congress, in a bipartisan way,
4 was able to come to conclusions that clearly recognized the
5 importance of critical infrastructure, of new technologies,
6 of reliability, all, in my mind, elements of economic
7 development, environmental development, and the social well
8 being and competitiveness of this country and probably the
9 most time that I've had since I've been here has been
10 implementing EAct, because we're building for the future,
11 instead of responding to the past.

12 And while it represents change at a time that the
13 industry is, because of the market in California and Enron
14 and other things, more reluctant to change than ever, I
15 think all of the EAct provisions that we are implementing
16 and working with DOE on, will bring value to customers,
17 which is why we're all here. Thanks.

18 CHAIRMAN KELLIHER: Excellent, thanks. Well,
19 now I'd like to make a few announcements before we get to
20 the discussion agenda.

21 The first is the introduction of our new
22 Solicitor, the Commission's Solicitor, Bob Solomon. Bob,
23 can you stand for a moment?

24 I'll say some nice things about you, and you can
25 stand awkwardly.

1 (Laughter.)

2 CHAIRMAN KELLIHER: Bob has been named the new
3 Solicitor of the Commission, and in that role, he will
4 supervise the work and responsibilities of appellate
5 attorneys and support professionals who are responsible for
6 defending and enforcing the Orders and initiatives of the
7 Commission in Federal Courts, primarily the Federal Courts
8 of Appeal and the U.S. Supreme Court.

9 Bob is a 17-year veteran of the Commission. He
10 became Deputy Solicitor in September of 2001.

11 Prior to that date, he served as legal advisor to
12 Chairman Herbert, and from February 1998 to January of 2000,
13 Bob served as legal advisor to Commissioner Vicky Bailey on
14 electricity and hydroelectric issues.

15 From 1988 to early 1998, Bob served in the
16 Commission's Office of General Counsel, first as an
17 appellate attorney in the Solicitor's Office, defending
18 Commission Orders, and then as Deputy Assistant General
19 Counsel, managing a staff of 20 attorneys in the development
20 of electric Orders and policies.

21 I have great confidence in Bob's abilities, and I
22 am sure that he will continue to effectively serve the
23 Commission in his role as Solicitor. I'd just like to
24 recognize that Bob's father was General Counsel of the
25 Commission, sometime ago, and I'm sure he would have been

1 very pleased to see you named as Solicitor of the
2 Commission.

3 Bob has also pointed out what my win/loss record
4 is so far at the Commission as Chairman. On my second day
5 as Chairman, I lost in the D.C. Circuit, so I was 0 and 1 on
6 my second day, but since then, I have recovered nicely and
7 my current record is 11/4/3, so we're doing well.

8 But I told Bob I'd like my record as Chairman in
9 the Courts to be similar to Georgetown Hoyas when Pat Ewing,
10 the father, played for them.

11 (Laughter.)

12 CHAIRMAN KELLIHER: So we have a tall task, but
13 we're doing well.

14 Now, we talked a lot about EPAct, and we will
15 have to deal with summary hearing Orders soon on EPAct, and
16 we are trying to deal Bob a good hand. The first line of
17 defense in a Commission Order is the Order-writer himself or
18 herself, and we are trying to deal Bob and his folks, a good
19 hand, a strong hand, so that they can protect the
20 Commission's Orders in court, and I look to Rehearing
21 Orders. That's the next wave of activity. But, thanks
22 again, Bob.

23

24

25

1 (Applause.)

2 CHAIRMAN KELLIHER: I'd also like to recap a
3 demand response conference that the Commission held last
4 week. On January 25th, the Commission convened a technical
5 conference on demand response and advanced metering
6 regarding issues raised in the Energy Policy Act. Pursuant
7 to the Energy Policy Act, we're preparing a report by
8 appropriate region that assesses demand response resources,
9 including those available from all consumer classes.

10 The technical conference included five panels,
11 with speakers from across the country. The first discussed
12 demand response issues and policy implications from a broad
13 perspective. The second panel focused on advanced metering,
14 allowing experts to summarize the key developments and
15 issues associated with advanced metering. The third panel
16 considered demand response and time-based rate programs and
17 tariffs in greater detail, learning from demand response
18 activities from an international perspective and from demand
19 response pioneers within the United States.

20 The last two panels gave Commission Staff the
21 opportunity to review this critical issue from a regional
22 perspective. Experts from around the country gave the
23 status of demand response by region, focusing on the role of
24 demand response in regional planning and regional
25 transmission planning and operations. These experts

1 discussed the successes, challenges and barriers to demand
2 response in their regions. Overall, the conference was very
3 useful and informative and will assist us in preparing our
4 report on demand response issues.

5 I'd also like to make an announcement regarding
6 the Alaska natural gas pipeline program progress report.
7 Section 1810 of the Energy Policy Act of 2005 provides that
8 within 180 days of the date of enactment and every 180 days
9 thereafter until the Alaska natural gas pipeline commences
10 operation, the Commission "shall submit to Congress a report
11 describing the progress made in licensing and constructing
12 the Alaska natural gas pipeline and any impediments thereto.

13 Yesterday, the Commission submitted the first of
14 these reports to Congress. This report describes the status
15 of the three potential projects seriously considered for
16 bringing Alaska natural gas from the Alaska North Slope to
17 the Lower Forty-Eight. It also describes the progress made
18 in advancing each of them, including actions taken by the
19 project sponsors, the Commission, and other federal and
20 state entities and potential impediments to each of the
21 projects. As discussed in this report, a successful Alaska
22 natural gas pipeline will have to overcome a variety of
23 significant impediments presented by the tremendous size,
24 scope and cost of any such delivery system, the long lead
25 time needed to develop such a project, unique environmental

1 and competitive conditions, and the international scope of
2 such a project. The impediments are being addressed by
3 legislative initiative and other governmental action, both
4 at the federal and state level, including both industry and
5 involved governmental entities.

6 Colleagues, any comment on demand response or
7 Alaska pipeline?

8 COMMISSIONER KELLY: No, Joe. I think, though,
9 in light of what the President said in his State of the
10 Union address about our country's interest in not being
11 dependent on foreign oil that it's appropriate that we all
12 look for ways to better implement demand response. That, in
13 the long run, is what's going to help us with our
14 dependency, not only on foreign oil, but foreign gas.

15 COMMISSIONER BROWNELL: A couple of points. I've
16 been at several technology conferences in the last 10 days,
17 and the tools are there, the question is whether the
18 political will is there. And that means dramatic changes in
19 the way we do rate design, it means empowering customers in
20 a way that we haven't done very effectively in this
21 industry, and it means I think very, very careful and
22 coordinated efforts by our agency, DOE, and the states.

23 And I think it also requires -- we talked a lot
24 about the lack of focus. There are a thousand demand
25 response opportunities out there, and I think we now need to

1 focus on some small number so we can begin to measure
2 impacts and take the next steps. So I hope that we can
3 continue to lead that debate. I think the demand response
4 conference -- I'm sorry I couldn't stay for the whole thing
5 -- was very effective and we've got a knowledgeable Staff
6 that can be a resource.

7 And on the Alaska pipeline, we had the great
8 honor last summer of visiting the governor and the
9 legislators and various stakeholders in the Alaska pipeline
10 project. It is of enormous size, enormous impact, and I
11 look forward to continuing to work with the parties and hope
12 they can come to some resolution. Because this really has
13 gone on a long time and we're missing opportunities, given
14 the fact of the long lead time. So I look forward to
15 continuing to work with the state, commend their leadership,
16 and hope everybody can step up to the plate very very soon.

17 CHAIRMAN KELLIHER: Thanks.

18 Madam Secretary, why don't we move to the
19 discussion agenda?

20 SECRETARY SALAS: Good morning, Mr. Chairman, and
21 good morning, Commissioners. Before we do that, Mr.
22 Chairman and Commissioners, I would just like to note for
23 the record that since the issuance of the Sunshine Notice on
24 January 26th, there were no struck items and also that you
25 have no consent items on the agenda this morning. In

1 addition to that, Commissioner Kelly votes first this
2 morning.

3 And with that, we will take up the first item for
4 discussion. It is E-1, Rules Concerning Certification of
5 the Electric Reliability Organization and Procedures for the
6 Establishment, Approval and Enforcement of Electric
7 Reliability Standards. And this is a presentation by
8 William Longenecker of our Office of Energy Markets and
9 Reliability, Christy Walsh, Jonathan First, Kumar Agarwal,
10 Michelle Veloso, David Miller and Cynthia Pointer.

11 MR. LONGENECKER: Good morning, Mr. Chairman and
12 Commissioners. My name is Bill Longenecker and I'm with the
13 Division of Policy Analysis and Rulemaking. Joining me at
14 the table is Jonathan First, the co-lead of the electric
15 reliability organization final rule team. As mentioned,
16 also at the table are Kumar Agarwal, Michelle Veloso, David
17 Miller and Cynthia Pointer from the Office of Energy Markets
18 and Reliability, Christy Walsh from the Office of the
19 General Counsel. Kevin Kelly is the sponsor of this
20 initiative. Other contributors include Mike Miller of the
21 Office of the Executive Director, Roger Morie and Mark
22 Higgins of the Office of Market Oversight and
23 Investigations.

24 On August 8th, 2005, Title XII of the Energy
25 Policy Act of 2005 was enacted into law. It added new

1 section 215 of the Federal Power Act to provide for a system
2 of mandatory enforceable reliability standards. Under this
3 electric power reliability system enacted by the Congress,
4 the United States will no longer rely on voluntary industry
5 reliability requirements for operating and planning the bulk
6 power system. Congress directed the development by industry
7 of Commission-approved and enforceable electric reliability
8 standards that are mandatory.

9 The draft final rule before you today as item E-1
10 would issue electric reliability regulations to implement
11 the new section 215 of the Federal Power Act within the six-
12 month deadline set by Congress. Adding those reliability
13 requirements to the Commission's regulations as Congress
14 directed us is an important step toward ensuring more
15 reliable electric service in the continental United States.

16 New section 215 of the Federal Power Act
17 obligates all users, owners and operators of the bulk power
18 system to comply with the reliability standards that will
19 become effective under the process contained in the draft
20 rule. The draft final rule provides procedures for the
21 Commission to certify a single electric reliability
22 organization, or ERO, to oversee the reliability of the
23 United States' portion of the North American Bulk Power
24 System. An ERO candidates' application to be the ERO is due
25 to be filed with the Commission 60 days after the rule

1 issues.

2 The ERO will be subject to the Commission's
3 oversight. It will be responsible for developing and
4 enforcing the mandatory reliability standards. The ERO must
5 submit each reliability standard to the Commission for
6 approval. Only a reliability standard approved by the
7 Commission is enforceable under section 215 of the Federal
8 Power Act. The reliability standards will apply to users,
9 owners and operators of the bulk power system.

10 Because of the interconnected nature of the bulk
11 power system in North America, which extends into Canada and
12 Mexico, the ERO is expected to seek recognition by the
13 appropriate Canadian and Mexican authorities.

14 In the draft final rule, the Commission finds
15 that it is necessary to have a strong ERO that can
16 effectively develop and enforce reliability standards. The
17 draft final rule sets out the EROs role and responsibilities
18 and its relationships with regional entities. The
19 Commission has the authority to approve all ERO actions and
20 procedural rules and to order the ERO to carry out its
21 responsibilities under section 215. The Commission may also
22 independently enforce reliability standards.

23 The ERO may also delegate its enforcement
24 responsibilities to regional reliability organizations
25 called regional entities. The delegation is effective only

1 if approved by the Commission. In addition, a regional
2 entity may propose a reliability standard to the ERO for
3 submission to the Commission for approval. This reliability
4 standard may be either for continent-wide application to the
5 entire North American Bulk Power System or for application
6 only within the region covered by the regional entity.

7 The ERO or a regional entity must monitor
8 compliance with the reliability standards. The ERO or a
9 regional entity may direct a user, owner or operator of the
10 bulk power system that violates a reliability standard to
11 come into compliance. The ERO or a regional entity may
12 impose monetary or non-monetary penalty on a user, owner or
13 operator for violating a reliability standard subject to a
14 review by and appeal to the Commission.

15 Here are the main features of the draft final
16 rule. The rule includes criteria that an ERO candidate must
17 satisfy to become the ERO and procedures for the Commission
18 review of the organizational rules and protocols of the ERO
19 and regional entities. Procedures under which the ERO may
20 propose a new or modified reliability standard for
21 Commission review and approval. A process for timely
22 resolution of any conflict between a reliability standard
23 and a Commission-approved tariff or order. The rule
24 includes a process for resolution of an inconsistency
25 between a state action and a Commission-approved reliability

1 standard. Criteria under which the ERO may enter into an
2 agreement to delegate authority to a regional entity for the
3 purpose of enforcing reliability standards and proposing
4 reliability standards to the ERO for submission to the
5 Commission. Regulations pertaining to the funding of the
6 ERO and regional entities.

7 The rule includes procedures governing ERO and
8 regional entity enforcement of reliability standards
9 including compliance audits and investigations into
10 violations of reliability standards and the assessment of
11 penalties.

12 The rule includes procedures for enforcement of
13 Commission rules and orders that apply to the ERO and
14 regional entities. Regulations governing the ERO's issuance
15 of periodic reports that will assess the reliability and
16 adequacy of the bulk power system in North America. And
17 finally, procedures for establishing regional advisory
18 bodies to provide advice to the Commission, the ERO or a
19 regional entity on matters of governance, applicable
20 reliability standards, the reasonableness of reliability
21 fees within the region, and other matters requested by the
22 Commission.

23 Thank you.

24 CHAIRMAN KELLIHER: Thank you very much for that
25 summary. I want to commend the Staff, this order -- it's a

1 long order, but I think it's very well written. It
2 discusses the issues and presents them very well. So I just
3 want to commend you for the quality of this rule, also the
4 timeliness of it.

5 Today the Commission issues final rules to
6 implement our reliability role under the Energy Policy Act
7 of 2005. Under the new law, the Commission is charged with
8 certifying an electric reliability organization,
9 establishing continental and regional reliability standards,
10 authorizing delegation of enforcement responsibility from
11 the ERO to regional entities and overseeing the enforcement
12 of mandatory continental and regional reliability standards.

13 Assuring reliability of the bulk power system is
14 arguably the most important responsibility given the
15 Commission by the Energy Policy Act of 2005. The last three
16 major regional blackouts, most recently in August 2003, were
17 all caused in part by violations of voluntary unenforceable
18 reliability standards. The August 2003 blackout spurred
19 Congress to enact legislation providing for mandatory
20 enforceable reliability standards.

21 The Commission moved swiftly on reliability
22 rules, issuing proposed rules only three weeks after the
23 Energy Policy Act was signed into law. Altogether, about
24 1700 pages of comments were filed on the proposed rule.
25 These comments were thoroughly reviewed and helped shape the

1 final rule. A number of significant changes were made to
2 the proposed rule, in large part because of the nature and
3 the strength and the persuasiveness of public comments.

4 As the rulemaking proceeded, the Commission acts
5 to improve its ability to discharge its new responsibilities
6 once an ERO is certified and reliability standards are
7 established. Last fall, in order to prepare the Commission
8 to discharge its duty to review proposed reliability
9 standards, I directed Commission Staff to hold a series of
10 technical conferences with industry and stakeholders to
11 review current continental and regional reliability
12 standards. These technical conferences reviewed procedures
13 for establishment, approval and enforcement of electric
14 reliability standards. As a result of these conferences, we
15 are now in a better position to review proposed reliability
16 standards.

17 The final rule is faithful to clear Congressional
18 intent manifested in the plain words and structure of the
19 new law. The Energy Policy Act gave the Commission the
20 important duty of assuring reliability of the bulk power
21 system. We will exercise that duty by certifying an ERO,
22 carefully reviewing proposed reliability standards,
23 approving standards that provide for reliable operation of
24 the bulk power system, remanding those that do not, and
25 working to improve reliability standards over time. We will

1 review proposed reliability standards to assure that they
2 not only have technical support but are written to be
3 enforceable against all users, owners and operators of the
4 bulk power system, as required by law.

5 I'm committed to faithfully executing the Energy
6 Policy Act in the manner Congress intended. The law does
7 not provide for absolute uniformity in reliability
8 standards. That much is clear from the plain words and
9 structure of the law. Under the Energy Policy Act, regional
10 entities will propose regional standards or variances to the
11 national reliability organization charged with standards
12 development, the ERO, which can then propose to the
13 Commission those regional standards that it has approved.
14 Congress would not have provided for consideration of
15 regional standards or variances if it had intended a "one
16 size fits all" approach. For example, the law applies for
17 appropriate deference to standards developed on an
18 interconnect-wide basis.

19 Now we had both continental and regional
20 reliability standards before enactment of the Energy Policy
21 Act, and I expect we will continue to have both continental
22 and regional reliability standards after issuance of the
23 final rule.

24 The final rule does not, however, contemplate
25 retaining regional difference that reflect mere custom and

1 practice, as opposed to real physical differences. The ACT
2 envisions an ERO that pursues a standard of excellence, that
3 moves beyond historic practices. The ERO should pursue best
4 practices which benefit all customers and maintain a strong
5 economy.

6 The Energy Policy Act of 2005 also gave the
7 Commission important new responsibilities to ensure that
8 approved mandatory reliability standards are properly
9 enforced. We will ensure that reliability standards are
10 properly enforced including, where appropriate, through
11 regional enforcement of such standards. The Act allows for
12 delegation of enforcement authority to regional entities
13 that meet certain statutory tests. But, the Commission has
14 ultimate responsibility to enforce reliability standards.

15 I want to emphasize the importance of assuring
16 effective enforcement of reliability standards. There's
17 been a great deal of attention in recent months to working
18 to get the right standards in place, and that is half of the
19 job. The other half is to make sure that reliability
20 standards, once approved, are effectively enforced.
21 Inconsistent and inconstant enforcement of even the most
22 robust standards will not assure reliability.

23 Now once our rule is final, our attention will
24 turn to the application for ERO certification. It's
25 critical that the ERO be a strong organization. A strong

1 ERO will be one that maintains its independence, is
2 adequately staffed to perform its important functions, and
3 that exercises careful oversight of the actions of regional
4 entities.

5 Regional entities will perform certain important
6 reliability functions and undertake enforcement actions.
7 However, the ERO must exercise close oversight in these
8 areas to assure that any proposed standards adequately
9 maintain reliability and do not burden other regions, and
10 that regional enforcement programs are of the highest
11 quality.

12 Under the law, the Commission must approve any
13 reliability standard before it becomes enforceable. I'm
14 operating under the expectation that it is the Version 0
15 standards that will be proposed to the Commission for its
16 consideration and review. In anticipation of the filing of
17 Version 0 standards, the Commission has been conducting a
18 constructive review of existing reliability standards. We
19 have been examining the existing Version 0 standards and the
20 relationship of Version 0 standards to regional standards.
21 We are prepared to begin our review of proposed reliability
22 standards.

23 However, we can make no promise that the
24 reliability standards ultimately established by the
25 Commission will never be violated. What we can do is

1 promise that, unlike in the past, if established reliability
2 standards are violated, the violator will be subject to
3 significant civil penalties.

4 And I support the final rule and look forward to
5 the views of my colleagues.

6 COMMISSIONER KELLY: Thank you, Joe. And thank
7 you Staff for putting together an excellent product in a
8 very short period of time. I know that you spent many days,
9 weeks, reviewing the comments that we received and we
10 received a lot of them, and I am 100 percent supportive of
11 this rule. I think that it takes the comments -- all the
12 comments into account and has done a very good job of
13 accommodating the diverse interests around the country.

14 I also think that we can look at Congress'
15 directive that the country establish an electricity
16 reliability organization as a sign, a signal, that the
17 country has changed its perspective on how we view
18 transmission. Obviously transmission started over 100 years
19 ago in individual cities and towns and, over time, over 100
20 years, it's been linked together.

21 And I think today's issuance of this rule is a
22 statement that the transmission system is different today.
23 It is entirely linked together across our continent and we
24 can't tolerate any weak links in the system. We're
25 dependent, all of us are dependent on the strength of that

1 transmission chain across the country.

2 And we have great aspirations for the electricity
3 reliability organization, as I know you'll see when you read
4 the rule. Not only that it will keep us from experiencing
5 another major blackout, but that it will also facilitate the
6 beginning of a continent-wide improvement to the quality of
7 power that people receive in the United States, in Mexico
8 and in Canada.

9 And I'd like to emphasize the international
10 aspect of this. The flow of electricity clearly doesn't
11 recognize political boundaries, nor should it. We're all
12 better off because of the fact that our transmission system
13 is linked with that of Canada and Mexico. Our welfare and
14 our economic health is intertwined also with the health and
15 welfare of Mexico and Canada. And the statute and the rule
16 recognizes this and recognizes that an effective ERO must
17 operate in an international arena and must seek recognition
18 and acceptance in Canada and Mexico, and the Commission is
19 dedicated to working with our Canadian and Mexican
20 counterparts regarding the cooperative development of
21 mandatory reliability standards and over time the increasing
22 effectiveness and reliability of our transmission system,
23 and I'm very pleased to support this rule.

24 COMMISSIONER BROWNELL: Thank you. At a time
25 when our infrastructure is stressed because of increased

1 demand and other investment, at a time when the security of
2 our infrastructure is of growing concern, and at a time when
3 reliability is more important than ever before for our
4 economic and social well-being, this is, as the Chairman
5 said, probably the most important rule we will ever
6 undertake.

7 Change is difficult, particularly in an industry
8 that is risk-averse. The Congress recognized that our
9 country is owed a stronger, independent ERO with consistent
10 and measurable rules. I thank them for giving us this
11 responsibility; I think they'll find today that we take it
12 very seriously.

13 I also thank EEI, NOACA, APPA and their members,
14 as well as our Canadian and Mexican counterparts for their
15 leadership and their vision. Their willingness to be change
16 agents bodes well for our new efforts at certainty and
17 accountability. They recognize their franchises bring
18 responsibility to the public. They believe that least
19 common denominator with no accountability is no longer
20 enough. Pursuit of excellence is the goal at the national
21 level and at the regional level.

22 And I think there have been concerns raised at
23 the regional level about losing control and losing
24 responsibility. On the contrary, I think their
25 responsibilities under the new regime will increase

1 enormously. To recognize and validate where rules need to
2 be different is an important responsibility, because it
3 means that training can be more difficult, that the bar may
4 be different in different regions and I know that is not
5 their goal. As they move towards a larger enforcement role,
6 independence is critical. And for those organizations at
7 the regional level who have multiple responsibilities, it
8 needs to be clear what resources are being allocated for
9 reliability and how they will maintain the independence of
10 the various functions and how reliability and enforcement
11 will be the primary goal of the organization, confused not
12 with other responsibilities nor influenced by other
13 responsibilities.

14 So I think this is a time of opportunity for
15 enormous growth, for accountability and for responsibility,
16 and I think that this a great opportunity to demonstrate our
17 commitment in this country and in North American to
18 improving and adding value for customers that, frankly, I
19 think has been missing. Today's rule is a great first step
20 and this Staff has done just a wonderful job of sorting
21 through an enormous number of very informed comments.

22 I need to thank my staff as well, who I think
23 have 300-plus pages memorized at this point. If you see
24 Christine's tabs, you know what I'm talking about.

25 But the fact remains this is not the end. We

1 will improve standards, but I hope we will continue to raise
2 the bar and continue to improve standards that have more
3 impact on our country like cybersecurity, standards we have
4 not yet anticipated. We need to work on operator training
5 and not do it on a haphazard basis. We need to be sure that
6 the ERO is well staffed and well budgeted to achieve the
7 goals that they have, which are enormously important. And I
8 think the top-down approach, where they are approving both
9 the governance and the rules and the budgets of the regions,
10 will allow them to do their job, allow us to review their
11 progress and the progress of the regions.

12 So I think we've made great progress, but it
13 doesn't stop today. And I hope the sense of urgency that we
14 felt in getting this rule done will be reflected in comments
15 and in the work at the ERO in their application and their
16 regions as we all rethink how we can do our job better.

17 Thank you.

18 CHAIRMAN KELLIHER: With that, why don't we vote?

19 COMMISSIONER KELLY: Aye.

20 COMMISSIONER BROWNELL: Aye.

21 CHAIRMAN KELLIHER: Aye.

22 SECRETARY SALAS: Next for discussion is E-2,
23 Revised Regulations for Governing Small Power Production and
24 Cogeneration Facilities, and is a presentation by Eric
25 Winterbauer from our Office of General Counsel, S.L.

1 Higginbottom, Paul Singh, Tom Dautel, Jim Eason, Deborah
2 Wyrick and Marka Shaw.

3 CHAIRMAN KELLIHER: The PURPA Staff have done a
4 lot of work the past month. You all have been busy.

5 MR. WINTERBAUER: Good morning. In this
6 rulemaking, the Commission is issuing a draft final rule, E-
7 2, that revises the Commission's regulations governing small
8 power production and cogeneration facilities in accordance
9 with section 210(n) of PURPA, which was added to PURPA by
10 section 1253 of EPAct 2005. The final rule ensures that new
11 cogeneration facilities are using their output for
12 legitimate purposes, and are not designed with a "sham" use
13 of thermal output whose only purpose is to achieve QF
14 status.

15 Specifically, the final rule does the following:
16 the rule ensures that new cogeneration facilities are using
17 their thermal output in a manner that is productive and
18 beneficial; the rule ensures that the output of new
19 qualifying cogeneration facilities is used fundamentally for
20 industrial, commercial or residential purposes; the rule
21 ensures that there is that there is continuing progress in
22 the development of efficient electric energy generating
23 technology; and the rule amends the exemptions available to
24 qualifying facilities from the Federal Power Act,
25 eliminating for some entities the exemptions from rate

1 regulation.

2 The Commission received over 60 comments and made
3 several changes to the proposals in the Notice of Proposed
4 Rulemaking based on those comments, especially for the
5 smallest facilities. For example, in response to comments,
6 QFs that are smaller than 20 megawatts will remain exempt
7 from Federal Power Act rate regulation.

8 In addition, new cogeneration facilities under 5
9 megawatts will be given a rebuttable presumption that they
10 satisfy the new requirements that their output be used in a
11 manner that is productive and beneficial and that their
12 output is used fundamentally for industrial, commercial or
13 residential purposes.

14 Lastly, other changes in response to concerns of
15 commenters include allowing the sales of electric energy
16 made pursuant to existing contracts to continue to be exempt
17 from Federal Power Act rate regulation.

18 Thank you.

19 CHAIRMAN KELLIHER: Thank you. I just want to
20 thank the Staff for their work on this order. I think it's
21 a good piece of work and it was a pleasure to read,
22 actually.

23 Today the Commission issues final rules to
24 implement provisions of the Energy Policy Act of 2005 and
25 amend the qualifying facility thermal efficiency and

1 ownership provisions of the Public Utility Regulatory
2 Policies Act of 1978, PURPA. These rules should limit the
3 potential for abuse under PURPA, curtail sham uses, and
4 prevent new PURPA machines.

5 The Energy Policy Act provisions relating to
6 qualifying facility thermal efficiency reflect a concern by
7 Congress about past abuse in PURPA with respect to sham uses
8 and PURPA machines. Congress wanted to guard against
9 certification of qualifying facilities whose thermal output
10 was for contrived purposes, which were designed primarily to
11 sell power and not to produce thermal output for a thermal
12 host and whose primary purpose was electric power output.

13 For this reason, the Congress directed the
14 Commission to issue rules to assure that new qualifying
15 cogeneration facilities are using their thermal output in a
16 productive and beneficial manner and that their electrical,
17 thermal, chemical and mechanical output is fundamentally
18 used for industrial, commercial or institutional purposes.
19 These changes are intended to prevent certification of
20 qualifying facilities that rely on sham uses of thermal,
21 electrical and chemical output in order to exploit the PURPA
22 mandatory purchase obligation.

23 Now in response, when the Commission analyzes the
24 use of a new cogeneration facility's thermal output, it will
25 no longer apply a presumptively useful standard that was

1 essentially an irrebuttable presumption. The Commission
2 will instead examine the use of a cogeneration facility's
3 thermal output to assure that it's used in a productive and
4 beneficial manner.

5 With respect to implementation of the fundamental
6 use provisions, the final rule adopts a case-by-case
7 approach which provides the Commission flexibility to
8 appropriately address various facilities and circumstances.
9 However, we do adopt a safe harbor to provide greater
10 regulatory certainty, improve administrative ease and make
11 the certification process more objective. Under the safe
12 harbor, at least 50 percent of the aggregated energy output
13 of the facility is to be used for industrial, commercial,
14 institutional or residential purposes. Facilities that fall
15 within the safe harbor will be automatically deemed to
16 comply with certain criteria of the fundamental use
17 standard. The Commission may certify a qualifying facility
18 that does not fall within the safe harbor, but the burden
19 will be on the applicant to demonstrate that it meets the
20 fundamental use standard.

21 The final rule retains the option of self-
22 certification of qualifying facilities and provides that
23 notices of self-certification and recertification will be
24 published in the Federal Register, which is a departure from
25 current practice. In addition, the final rule modifies

1 Commission regulations to provide that the Commission may,
2 on its own motion, revoke the qualifying facility's status
3 of self-certified and recertified qualifying facilities if
4 we find that they do not meet the applicable requirements,
5 and that should limit the potential for abuse.

6 We also act to close a regulatory gap relating to
7 market-based wholesale power sales made by qualifying
8 facilities outside of PURPA contracts, or non-PURPA sales.
9 When the Commission originally implemented PURPA, it granted
10 very broad exemptions from Federal Power Act and other
11 federal and state laws. Since then we've become concerned
12 about the potential for abuse in unregulated wholesale power
13 sales by qualifying facilities outside the structure of
14 PURPA. We've also reexamined the rationale for the broad
15 exemption from the Federal Power Act and determined that it
16 removed a large number of wholesale power sales from any
17 regulatory oversight. We propose to eliminate the
18 exemptions from sections 205 and 206 of the Federal Power
19 Act that the Commission previously granted except for the
20 sales governed by state commissions. We do not affect
21 existing wholesale power contracts, however.

22 We also clarified that the new Federal Power Act
23 provisions relating to market manipulation, false statement
24 and market transparency apply to qualifying facilities, as
25 well as other wholesale power sellers.

1 The Energy Policy Act also eliminated the
2 ownership limitations for qualifying cogeneration and small
3 power production facilities and the final rule conforms our
4 regulations to this statutory change.

5 The Commission does have a continuing duty under
6 PURPA to have in place such rules as are necessary to
7 encourage cogeneration and small power production. We
8 believe this proposed rule is consistent with that duty, as
9 well as our new responsibility under the Energy Policy Act.
10 And I support the final rule.

11 Colleagues?

12 COMMISSIONER KELLY: I think, in looking at this
13 rule, it's important to acknowledge that there have been
14 concerns in Congress about the implementation of QF, but I
15 don't think we should stress that. Because Congress, in
16 section 1253 of the Energy Policy Act, also was clear that
17 it wanted to ensure -- quote -- "that there is continuing
18 progress in the development of efficient electric energy
19 generating technology."

20 And in his State of the Union message two nights
21 ago, the President spoke about our nation's overreliance on
22 fuel sources from foreign countries and the need to reduce
23 that reliance. I completely agree, and in my opinion,
24 qualifying facilities have quietly represented and continue
25 to represent an important component of the strategy to

1 accomplish that goal in the United States.

2 As the overall strategy is to reduce our reliance
3 on foreign energy resources, a particular comment of that
4 strategy that I refer to here is the effort to have our
5 nation use its resources more efficiently, to get more work
6 out of each Btu of fuel energy. QF's, especially
7 cogenerators, almost by definition use their input energy
8 more efficiently than other generators. More efficient
9 use of energy means lower demand for foreign energy sources
10 that we would otherwise have. PURPA has long helped to
11 foster investment and development work on more efficient use
12 of energy, and it's my hope that this final rule will
13 continue that vital effort.

14 I'd like to highlight several provisions of the
15 rule. Upon review of the comments to the NOPR, the final
16 rule abandons the NOPR's proposal to require QF applicants
17 to make a showing that their projects use technology that
18 demonstrates continuing progress in the development of
19 efficient electric energy generating technology. Putting
20 such a requirement on individual applicants could have had
21 adverse consequences unintended by Congress in the Energy
22 Policy Act, such as causing a bias towards just new
23 technology even where new technology would not be an
24 improvement over existing technology. So instead the final
25 rule finds that the Commission is meeting our burden under

1 the Energy Policy Act to ensure continuing progress in the
2 development of efficient electric energy generating
3 technology through the particular rules that we put in place
4 today with this final rule. I support this change in the
5 NOPR as being more consistent with Congress' intent and with
6 the nation's goals for QF generation and for energy use in
7 general.

8 Also, until now, the Commission has relied on a
9 presumptively useful standard that was irrebuttable to
10 determine whether a cogeneration facility's thermal output
11 was useful. The Energy Policy Act essentially directed the
12 Commission to make a greater effort to ensure that such
13 output is indeed productive and beneficial, and this final
14 rule meets this requirement, as Joe explained, by putting
15 the burden on most QF applicants to show that their thermal
16 output meets the standard. However, the final rule does
17 make an exception for small facilities of 5 megawatts and
18 under and cogeneration facilities built to serve the thermal
19 needs of a preexisting thermal host.

20 The final rule finds that the purposes of the
21 Energy Policy Act are served by rebuttably presuming that
22 the thermal output of these two types of facilities will be
23 productive and beneficial. The final rules makes a similar
24 rebuttable presumption for small QFs with respect to the
25 fundamental use requirement.

1 I think that all of these provisions are
2 appropriate, and I hope they will help relevant QF
3 developers continue to do their part to reduce the nation's
4 dependence on foreign fuel sources.

5 COMMISSIONER BROWNELL: Like all great
6 experiments, PURPA was conceived with the best of
7 intentions. But like all great experiments, it needs to be
8 evaluated in light of current conditions. And I think that
9 that is what Congress directed us to do and I think that is
10 what we have done.

11 Having lived through a restructuring in
12 Pennsylvania, where we had to review these contracts, I
13 understand that some achieved the goal of being a lab for
14 innovation and creating competitive options; many did not.
15 Much of the investment did not bring value to customers, it
16 brought value to those who were investing.

17 So I think this creates opportunities but it
18 also, consistent with the theme of the earlier order, brings
19 accountability and measured metrics, so that we know that
20 we're achieving what indeed these were intended to achieve.
21 So for that, I support the final rule. I thank the Staff.
22 I think some of the steps that they've taken, including some
23 of the exemptions, are appropriate and desirable. But in
24 the end, I think that we have expanded the options for
25 achieving the goals of competition in innovation and we need

1 to make sure that those are also allowed in the marketplace.

2 Thank you.

3 CHAIRMAN KELLIHER: Okay. Shall we vote?

4 COMMISSIONER KELLY: Aye.

5 COMMISSIONER BROWNELL: Aye.

6 CHAIRMAN KELLIHER: Aye.

7 SECRETARY SALAS: And finally for discussion this
8 morning is E-3. This is Long-Term Firm Transmission Rights
9 in Organized Electricity Markets and Long-Term Transmission
10 Rights in Markets Operated by Regional Transmission
11 Organizations and Independent System Operators. It's a
12 presentation by Jeff Dennis, Udi Helman, Harry Singh, Bud
13 Earley and Roland Wentworth.

14 MR. DENNIS: Mr. Chairman and Commissioners, good
15 morning. My name is Jeff Dennis, from the Office of the
16 General Counsel. With me this morning are Bud Earley, Udi
17 Helman and Roland Wentworth from the Office of Energy
18 Markets and Reliability, and Harry Singh from the Office of
19 Market Oversight and Investigations. Udi and Harry will be
20 presenting in just a moment.

21 E-3 is a Draft Notice of Proposed Rulemaking in
22 response to section 1233 of the Energy Policy Act of 2005.
23 Section 1233(a) of that act adds a new section 217 to the
24 Federal Power Act concerning native load service
25 obligations. New section 217(b)(4) requires the Commission

1 to exercise its authority in a manner that facilitates the
2 planning and expansion of transmission facilities to meet
3 the reasonable needs of load-serving entities to satisfy
4 their service obligations and enables load-serving entities
5 to secure firm transmission rights on a long-term basis for
6 long-term power supply arrangements made or planned to meet
7 their service obligations.

8 Section 1233(b) of the Energy Policy Act requires
9 the Commission to, within one year of enactment, implement a
10 new section 217(b)(4) by rule or order in transmission
11 organizations with organized electricity markets.

12 Prior to the enactment of the Energy Policy Act,
13 the issues raised by introducing long-term transmission
14 rights into the organized electricity markets were
15 considered in a Staff paper released on May 11th, 2005 in
16 Docket Number AD05-7-000. Comments received on the Staff
17 paper were considered in preparing this proposal.

18 Long-term transmission rights are an important
19 addition to the organized electricity markets because they
20 will provide an additional measure of certainty to load-
21 serving entities regarding the transmission component of the
22 total cost to meet their service obligations. Several
23 entities submitting comments on the Staff paper stated that
24 this additional certainty would allow load-serving entities
25 to more readily finance new generation investments. The

1 comments we received on the Staff paper also made clear that
2 introducing long-term transmission rights into the existing
3 organized electricity markets will present challenges,
4 however, such as assuring the financial adequacy of such
5 rights over time and maintaining the tradability of rights
6 with longer terms.

7 In general, the draft NOPR proposes to require
8 transmission organizations with organized electricity
9 markets to make long-term firm transmission rights available
10 to all market participants.

11 Because it is unlikely that there is a single
12 approach or design for long-term firm transmission rights
13 that would be appropriate for all regions with organized
14 electricity markets, the draft NOPR proposes eight
15 guidelines for the development of long-term firm
16 transmission rights. Transmission organizations with
17 organized electricity markets would make a compliance filing
18 within 180 days of the final rule to either proposed
19 specific long-term firm transmission right designs
20 consistent with the guidelines or explain how they already
21 make long-term firm transmission rights available that are
22 consistent with the guidelines. This approach would provide
23 flexibility for transmission organizations and their
24 stakeholders to develop long-term firm transmission rights
25 that fit their current market design and meet the needs of

1 load-serving entities in their region, while also ensuring
2 that all long-term firm transmission rights have certain
3 fundamental properties.

4 MR. HELMAN: I will now describe the features of
5 the proposed rights. The key feature is the term of the
6 rights. In the current organized electricity markets, the
7 longest term of a transmission right allocated for existing
8 use of the system is one year. The NOPR does not propose a
9 specific term length for the long-term rights, but states
10 that the Commission considers long-term to mean terms on the
11 orders of multiple years. It proposes to require that long-
12 term rights be offered for terms sufficient to support long-
13 term supply contracts and investments that may be measured
14 in decades. Because the rights would be renewable, the
15 draft NOPR leaves it up to transmission organizations and
16 stakeholders to determine how to specify rights that provide
17 the long-term coverage.

18 In terms of what the long-term rights would look
19 like, again the draft NOPR leaves many details open for
20 regional discussion, although it reviews the features of
21 some possible alternative designs. The guidelines in the
22 NOPR would require, however, that the long-term rights
23 offered by transmission organizations have certain
24 properties.

25 For example, the NOPR proposes that the rights

1 are point to point with a source and sink, so that an LSE
2 that wants coverage of transmission usage charges for a
3 specific generator can obtain it. The NOPR also proposes
4 that once a long-term right has been granted the hedging
5 properties of the right should not be diminished for its
6 term except in extraordinary circumstances. What this means
7 is that if, in a particular period, the transmission
8 organization does not collect sufficient revenues from
9 transmission users to pay all the long-term rights, it will
10 collect those funds from market participants following some
11 agreed-upon risk sharing rule rather than diminish the
12 payments to specific rights. The draft NOPR seeks comments
13 on this issue, and on several others related to the proposed
14 guidelines.

15 MR. SINGH: I'll now describe how these rights
16 can be obtained.

17 The draft NOPR proposes two methods to obtain the
18 rights. The first is to build new transmission capacity,
19 and the NOPR proposes that all transmission organizations'
20 tariffs should state clearly that the transfer capability
21 created in an upgrade or expansion is available to the
22 entity that pays for the upgrade in accordance with the
23 applicable cost allocation rules.

24 The second is through allocation of rights to
25 existing transmission capacity. In the event that all

1 requests for long-term rights to existing capacity cannot be
2 fulfilled, requests from entities that have long-term power
3 supply arrangements to satisfy service obligations will have
4 a preference. Finally, once obtained, the long-term rights
5 should be reassignable.

6 The draft NOPR also discusses language on
7 "planning and expansion of transmission facilities" in the
8 Energy Policy Act and seeks comments on several issues. In
9 particular, it seeks comment on the provision of adequate
10 planning and expansion of the grid to ensure that long-term
11 rights remain feasible for the entire term of the long-term
12 rights and the financial results of a failure to adequately
13 do so.

14 We are available for any questions you may have.
15 Thank you.

16 CHAIRMAN KELLIHER: Thank you. I want to thank
17 the Staff for this order as well. I think it was well done,
18 well written, actually interesting to read, so I want to
19 thank you for the quality of this one.

20 Today the Commission issues proposed rules to
21 require transmission organizations with organized
22 electricity markets to make available long-term firm
23 transmission rights that satisfy certain guidelines set
24 forth in the draft regulations. These guidelines provide a
25 framework for the development of specific long-term firm

1 transmission right designs by each transmission organization
2 with an organized market.

3 These proposed rules will implement provisions of
4 the Energy Policy Act of 2005 concerning native load service
5 obligations. Section 1233 of the Energy Policy Act directed
6 the Commission to issue final rules within a year of
7 enactment that facilitate the planning and expansion of
8 transmission facilities to meet the reasonable needs of
9 load-serving entities to satisfy their service obligations
10 and enable load-serving entities to secure firm transmission
11 rights or equivalent financial rights and make long-term
12 supply arrangements.

13 Long-term firm transmission rights are an
14 important issue, particularly to wholesale power customers
15 who want to make long-term supply arrangements. These
16 customers want to obtain rights comparable to what was
17 available to them prior to the formation of organized
18 markets, namely a fixed long-term level of service under
19 pricing arrangements that hedged the congestion cost risk
20 that they now face in the organized markets.

21 Long-term firm transmission rights are also
22 important to development of the grid. Long-term rights are
23 currently available to market participants that support an
24 expansion or upgrade of grid transfer capability.
25 Specifying and allocating long-term firm transmission rights

1 supported by the existing transfer capability raises
2 difficult issues.

3 While we're acting under the Energy Policy Act,
4 we've been working on this issue for some time. The
5 proposed rule is informed by the Staff white paper released
6 last spring, as well as by public comments on the white
7 paper. Some of these comments argue that failure to offer
8 long-term transmission rights in the organized markets with
9 terms of greater than one year is a key deficiency that
10 increases financial risk, impedes development of forward
11 energy markets, and erects barriers to investment in new
12 generating capacity.

13 The guidelines in the proposed rule will help
14 shape development of long-term transmission rights that
15 transmission organizations would make available to all
16 transmission customers. In the event a transmission
17 organization cannot accommodate all requests for long-term
18 firm transmission rights over existing transmission
19 capacity, the Commission proposes that a preference be given
20 to load-serving entities with long-term supply arrangements
21 used to meet service obligations, and we believe that
22 preference is consistent with the Energy Policy Act
23 statutory language.

24 Under the guidelines, long-term firm transmission
25 rights must be available with term lengths sufficient to

1 meet the needs of load-serving entities with long-term power
2 supply arrangements, existing or planned, used to satisfy
3 their service obligations. And as a general rule, we would
4 expect proposals with multiple-year terms.

5 The approach the Commission is taking
6 appropriately allows for regional flexibility. This
7 flexibility will allow transmission organizations to craft
8 alternative designs that reflect regional preferences and
9 accommodate regional market design. The comments on the
10 Staff white paper did not favor a "one size fits all"
11 approach and that is not what we propose today.

12 Consistent with the Energy Policy Act, this
13 proposed rule is limited to transmission organizations with
14 organized electricity markets, not public utilities outside
15 those regions. And I support the proposed rule.

16 Colleagues?

17 COMMISSIONER KELLY: The NOPR does parallel the
18 statutory language in the Energy Policy Act requiring that
19 RTOs and ISOs make long-term rights available sufficient to
20 support load obligations served by long-term resources, and
21 I also fully support this effort.

22 I recognize that this effort is complicated by
23 the fact that the current RTO markets were not specifically
24 designed to support long-term transmission rights or, for
25 that matter, long-term power supply arrangements. However,

1 there is nothing unreasonable about the business model of
2 entities who prefer to rely on long-term arrangements to
3 serve their load. Essentially, they have chosen to trade
4 off a certain amount of economic efficiency for the enhanced
5 reliability and price certainty of long-term arrangements.

6 Provision of electricity is an important service,
7 certainly important enough to justify such a trade-off for
8 those who prefer to make it and are willing to pay the
9 associated economic costs. Accordingly, I'm pleased that
10 Congress directed this action and I'm pleased that we are
11 carrying it out today.

12 I want to add to the Chairman's thanks to Staff
13 for its very hard work in preparing this document. Not only
14 is the issue complicated, but creating a proposed rule to
15 handle it is complicated. And I think that the approach
16 that you pioneered to set out a list of guidelines is an
17 excellent one and a productive one. And I think that the
18 guidelines that we will adopt in today's NOPR do
19 appropriately balance Congress' directive that long-term
20 transmission rights be made available with the fact that
21 each organized electricity market in the United States is
22 different, and each needs flexibility in order to be able to
23 carry out Congress' directive.

24 I encourage comments that, in particular, would
25 suggest that our approach is the wrong one, but I fully

1 believe that it is a very productive and efficient way to
2 manage the process.

3 Thank you.

4 COMMISSIONER BROWNELL: I want to thank the Staff
5 for kind of a different reason, and that is because I think
6 long-term FTRs are a little bit like the search for the Holy
7 Grail, and writing this order and amassing all the comments
8 had to be like living in the inner circle of hell. So I
9 appreciate what you did on what I think is a really complex
10 issue.

11 And I think this is a good beginning, but in
12 truth I don't know the answer: for example, are regional
13 FTRs tomorrow's seam solution? How do we adequately address
14 the issue of load growth without letting load growth be the
15 way to institutionalize discrimination and access?

16 We talk about planning, and increasingly planning
17 has become an issue, and I know Suedeen and I have talked
18 about this. And I think this is the place maybe where we
19 can get it right. Some of my concerns about the planning
20 process is that it's not inclusive, that entrepreneurs are
21 not included, TDUs are not included, other customers are not
22 included. There's no way of validating the inputs. And so
23 it's controlled by people who have a vested interest,
24 particularly if they own generation and are benefiting from
25 congestion, are basically controlling the planning process.

1 And I'm not sure that's particularly healthy.

2 I think that we also need a better calculation of
3 benefits. I was at SPP the other day working with some
4 groups from a subregion, and I think SPP acknowledged, the
5 chairman acknowledged that maybe we're not looking at the
6 benefits in the right way, maybe we're not really looking at
7 subregional issues in an appropriate way. It to me again
8 also brings up what I think is a very tough issue, which is
9 what is the difference between economic projects and
10 reliability projects. And I don't get it. And we've had
11 endless discussions about this.

12 But to make this work I think that you've got to
13 address those critical issues and planning may be the most
14 important one of them. We did not create RTOs and ISOs to
15 establish a status quo and a bureaucracy, we created them,
16 as I say often, to bring incremental improvement and
17 opportunity for participation by new players in the
18 marketplace, and I think that's an effort that really needs
19 to pick up some steam as we look at this.

20 So I hope there's an answer to long-term
21 financial transmission rights, but I for one haven't a clue
22 what it might be. Thanks.

23 CHAIRMAN KELLIHER: Shall we vote?

24 COMMISSIONER KELLY: Aye.

25 COMMISSIONER BROWNELL: Aye.

1 CHAIRMAN KELLIHER: Aye.

2 Any other business colleagues?

3 (No response.)

4 CHAIRMAN KELLIHER: Okay. That's a wrap.

5 Where'd by gavel go? Oh, Damian had it.

6 (Laughter.)

7 Thank you.

8 (Whereupon, at 11:37 a.m., the Commission meeting
9 was adjourned.)

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